

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JACOB IVAN SCHMITT,

Petitioner,

v.

ERIC JACKSON,

Respondent.

CASE NO. 3:18-cv-05602-BHS-GJL

ORDER LIFTING STAY AND  
GRANTING MOTION TO AMEND  
PETITION

This matter is before the Court on referral from the District Court and on both Respondent's Motion to continue the stay, Dkt. 41, and Petitioner's Motion to amend his habeas petition, Dkt. 42.

Petitioner Jacob Ivan Schmitt, proceeding *pro se*, filed a Petition pursuant to 28 U.S.C. § 2254 in July 2018. Dkt. 1. In September 2018, Respondent filed a motion requesting the Court stay the Petition so that Petitioner could exhaust his state court remedies. Dkt. 10. The Court granted the Motion and has subsequently granted multiple motions to stay this matter on the basis that Petitioner is exhausting his state court remedies. *See* Dkts. 12, 14, 16, 18, 20, 24, 25, 29, 31, 33, 35.

1 On May 2, 2023, Respondent filed another Motion to continue the stay indicating that  
2 Petitioner's state court proceedings remain pending in the Washington State Courts. Dkt. 41.  
3 However, on May 9, 2023, Petitioner filed a Motion to amend his federal habeas petition,  
4 informing the Court that he is voluntarily withdrawing an unexhausted ground for relief from his  
5 original Petition. Dkt. 42. Petitioner has attached a proposed amended petition to that Motion.  
6 See Dkt. 42-1. In addition, Petitioner responded to the Motion to continue the stay requesting that  
7 the stay be lifted. Dkt. 43. Respondent has responded, indicating he does not oppose Petitioner's  
8 Motion to amend or his request to lift the stay. Dkt. 44.

9 Upon review of the Motions, the proposed amended Petition, and other relevant records  
10 in this case, the Court **GRANTS** the Motion to amend the petition for writ of habeas corpus  
11 (Dkt. 42). The Motion to stay (Dkt. 41) is **DENIED** as moot. Therefore, the Court further  
12 **ORDERS:**

13 1) The amended petition for writ of habeas corpus (Dkt. 42-1) is accepted for filing.  
14 The Clerk shall docket the Amended Petition (Dkt. 42-1) as an Amended Petition for Writ of  
15 Habeas Corpus.

16 2) Within **forty-five (45) days**, Respondent shall file and serve an answer in  
17 accordance with Rule 5 of the Rules Governing Section 2254 Cases in United States District  
18 Courts. As part of such answer, Respondent shall state whether Petitioner has exhausted  
19 available state remedies and whether an evidentiary hearing is necessary. Respondent shall not  
20 file a dispositive motion in place of an answer without first showing cause as to why an answer is  
21 inadequate. Respondent shall file the answer with the Clerk of the Court and serve a copy of the  
22 answer on Petitioner.

1           3)       The answer will be treated in accordance with LCR 7. Accordingly, on the face of  
2 the answer, Respondent shall note it for consideration on the fourth Friday after filing. Petitioner  
3 may file and serve a response not later than the Monday immediately preceding the Friday  
4 designated for consideration of the matter, and Respondent may file and serve a reply not later  
5 than the Friday designated for consideration of the matter.

6           Dated this 19th day of May, 2023.

7  
8 A handwritten signature in black ink, appearing to read 'Grady J. Leupold', is written over a solid horizontal line.

9           Grady J. Leupold  
10          United States Magistrate Judge  
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